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Attorneys for Plaintiffs
LENSCRAFTERS, INC. and
EYEXAM OF CALIFORNIA, INC.

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

LENSCRAFTERS, INC. and EYEXAM OF
CALIFORNIA, INC.,

Plaintiffs,

v.

LIBERTY MUTUAL FIRE INSURANCE
COMPANY; EXECUTIVE RISK SPECIALTY
INSURANCE COMPANY; UNITED STATES
FIRE INSURANCE COMPANY; MARKEL
AMERICAN INSURANCE COMPANY and
WESTCHESTER FIRE INSURANCE COMPANY,

Defendants,

AND RELATED COUNTER- AND CROSS-
CLAIMS.

Case No.: C-07-2853 SBA

**DECLARATION OF ELIOT
GROSSMAN, O.D., IN OPPOSITION
TO UNITED STATES FIRE
INSURANCE COMPANY'S MOTION
TO DISMISS OR, IN THE
ALTERNATIVE, STAY ACTION**

Hearing Date: September 18, 2007
Time: 1:00 p.m.
Courtroom: 3
The Hon. Sandra Brown Armstrong

1 I, Eliot Grossman, O.D., declare:

2 1. I submit this Affidavit on behalf of LensCrafters, Inc. and EYEXAM of California,
3 Inc. ("EYEXAM") in opposition to the motion to dismiss filed by United States Fire Insurance
4 Company. I have personal knowledge of the facts stated herein and, if called as a witness, could
5 testify competently thereto.

6 2. I am the President of EYEXAM. I have held this position since January 1, 2003.
7 Prior to that, I was the Executive Director of EYEXAM. I held that position from 1997 to the end
8 of 2002.

9 3. EYEXAM was organized under a California statute, the Knox-Keene Health Care
10 Service Plan Act of 1975, as a specialized health care service plan. EYEXAM is a California
11 corporation and its principal place of business is Mission Viejo, California.

12 4. The EYEXAM optometrists practice in offices located within LensCrafters, Inc.'s
13 ("LensCrafters") stores in California, in space leased from LensCrafters. LensCrafters operates
14 retail stores that dispense prescription eyewear. There are approximately 100 LensCrafters stores
15 currently located in California.

16 5. During the time period 1998 to the present, the Risk Management and Insurance
17 Department of LensCrafters, Inc., located in Mason, Ohio, obtained all insurance necessary for
18 EYEXAM's business activities and operations. EYEXAM had no direct involvement in the
19 negotiation, execution, or procurement of any particular insurance policy, and had no contact with
20 any insurance broker in New York.

21 6. EYEXAM does and has done business only in California.

22 7. EYEXAM does not transact and has not transacted business in the State of New
23 York. EYEXAM is not and never has been licensed to do business in New York; it has never had
24 any offices, property or bank accounts in New York; and it never has employed any employees in
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1 New York. It has had no agent for service of process in New York, and it has not been and is not
2 regulated by New York law.

3 I declare under penalty of perjury that the foregoing is true and correct.

4 Executed this 28th day of August, 2007 in Mission Viejo, California.

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6 /s/ Eliot Grossman, O.D.

7 Eliot Grossman, O.D.
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